106TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 106–435

ELIMINATION OF RESTRICTIONS ON USE OF SAN LUIS UNIT FACILITIES FOR WATER TRANSFERS IN THE CENTRAL VALLEY PROJECT

NOVEMBER 2, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3077]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3077) to amend the Act that authorized construction of the San Luis unit of the Central Valley Project, California, to facilitate water transfers in the Central Valley Project, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. ELIMINATION OF RESTRICTIONS ON USE OF SAN LUIS UNIT FACILITIES FOR WATER TRANSFERS IN THE CENTRAL VALLEY PROJECT.

(a) ELIMINATION OF STATUTORY RESTRICTIONS.—Public Law 86–488 (74 Stat. 156) is amended—

(1) in section 2 by striking "and the use of the additional capacity for water service shall be limited to service outside of the Federal San Luis unit service area"; and

(2) in section 3 by adding "and" after the semicolon at the end of paragraph (h), by striking the semicolon at the end of paragraph (i) and inserting a period, and by striking paragraph (j).

(b) REQUIREMENTS FOR DELIVERY INSIDE FEDERAL SERVICE AREA.—Such Act is further amended—

(1) in section 2 by inserting "(subject to section 9)" after "a perpetual right to the use of such additional capacity"; and

(2) by adding at the end the following:

"SEC. 9. The State of California may not, under section 2, use additional capacity to deliver water inside the Federal San Luis unit service area unless—

"(1) such delivery is managed so as to ensure that—

"(A) agricultural drainage discharges arising from use of the delivered water—

"(i) comply with any waste discharge requirements issued for such discharges; or

"(ii) if there are no such waste discharge requirements, do not cause water quality conditions in the San Joaquin River and the Sacramento-San Joaquin Delta and San Francisco Bay to be degraded or otherwise adversely affected; and

"(B) use of the delivered water for irrigation does not frustrate or interfere with efforts by the United States and the State of California to manage agricultural subsurface drainage discharges from the San Luis unit; and

"(2) such delivery is consistent with those provisions of operating agreements between the Secretary and the Department of Water Resources of the State of California that are consistent with this Act.".

(c) AMENDMENT OF EXISTING AGREEMENTS.—The Secretary of the Interior—

(1) shall seek to amend each agreement entered into by the United States and the State of California under section 2 of Public Law 88–488 before the date of the enactment of this Act, as necessary to delete from such agreement restrictions on use of additional capacity for water service for land in the Federal San Luis unit service area that are not consistent with the amendments made by this Act; and

(2) pending such amendment, shall not enforce any such restriction.

PURPOSE OF THE BILL

The purpose of H.R. 3077 is to amend the act that authorized construction of the San Luis Unit of the Central Valley project, California, to facilitate water transfers in the Central Valley Project.

BACKGROUND AND NEED FOR LEGISLATION

The Central Valley of California is one of the most fertile agricultural areas in the world. Although the land is capable of growing a wide variety of crops, prior to the Central Valley Project Act, most of the area lacked an adequate water supply. In particular, when debate commenced on the San Luis Unit, a component of the Central Valley Project, in the late 1950s and early 1960s, Congressional testimony noted (86th Congress, Report No. 154) that the areas to be served from the San Luis Unit had "no appreciable natural surface water supplies." In addition the record stated, "About three-fourths of the area now is irrigated from wells but the ground water is poor in quality, and limited in amount. The wells are expensive to develop and the water levels have been receding without interruption for more than a decade." Thus, an adequate and dependable water supply became an important reason for the passage of the San Luis Act (Public Law 86–488, 74 Stat. 156). Since the passage of the San Luis Act, the County of Fresno (which receives water from the Unit) has become the number one agriculture producing county in the nation.

Not only has the San Luis Act served its purpose to bring water to an arid area, it has also accomplished its two other primary objectives: to create a "unique opportunity for pooling of Federal and State resources and abilities"; and to provide an assurance that water supplied from the federally-developed project would continue

to be governed by federal reclamation law. H.R. 3077 continues to support the policy that water supplied through the federal facilities would be subject to federal law even if the source of the water is the State project. And likewise it is understood that the State water delivered without the federal project remains controlled by State law.

Federal agricultural contractors in the Central Valley Project (CVP) of California who rely on exported water supplies from the Sacramento-San Joaquin River Delta have seen a reduction in their federal water supplies over the last several years, even though these last few years have been "wet" years. This reduction has been increased because of the accumulated impacts of implementation of the Endangered Species Act, Central Valley Project Improvement Act (CVPIA), and the Bay Delta Accord.

This reduction in CVP export supply reliability has increased the desire of many water managers to pursue water transfers. Additionally, numerous state laws, and federal laws (Section 225 of the 1982 Reclamation Law and Section 3405 of the CVPIA), have been enacted in an attempt to facilitate water transfers to assist agricultural and urban water users in maintaining reliable water supplies.

The San Luis Act prohibits the State of California from providing water service to the San Luis Unit of the CVP. The Committee believes that this prohibition is inconsistent with current federal and state policies which encourage and facilitate water transfers. The amendment pursuant to this legislation would meet current needs while remaining consistent with the original intent of the underlying Act.

COMMITTEE ACTION

H.R. 3077 was introduced on October 14, 1999, by Congressman Cal Dooley (D–CA). H.R. 3077 was referred to the Committee on Resources and within the Committee to the Subcommittee on Water and Power. A legislative hearing was held on the bill on October 21, 1999, by the Subcommittee on Water and Power. On October 27, 1999, the Full Resources Committee met to consider the bill. The Subcommittee was discharged from further consideration of the measure by unanimous consent. Congressman George Miller (D–CA) offered an amendment that ensured that additional water to the San Luis Unit would be subject to both State and federal law and not aggravate drainage issues in the region. The Miller amendment was adopted by voice vote. The bill was then ordered reported, as amended, by voice vote to the House of Representatives.

SECTION-BY-SECTION ANALYSIS

Section 1. Elimination of restrictions on use of San Luis unit facilities for water transfers in the Central Valley project.

This section amends the San Luis Act of 1960 by removing the provisions that restrict the State of California from using additional water capacity to service in the Federal San Luis unit service area.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. *Cost of Legislation.*—Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. *Congressional Budget Act.*—As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. The Congressional Budget Office estimates that enactment of this bill would increase offsetting receipts (and thus reduce direct spending) by $2 million annually.

3. *Government Reform Oversight Findings.*—Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. *Congressional Budget Office Cost Estimate.*—Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 29, 1999.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3077, a bill to amend the act that authorized construction of the San Luis Unit of the Central Valley Project, California, to facilitate water transfers in the Central Valley Project.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3077—A bill to amend the act that authorized construction of the San Luis Unit of the Central Valley Project, California, to facilitate water transfers in the Central Valley Project

CBO estimates that implementing H.R. 3077 would not have a significant impact on discretionary spending over the 2001–2004 period. The bill would increase offsetting receipts from water users, thus reducing direct spending by about $2 million annually; therefore, pay-as-you-go procedures would apply. H.R. 3077 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Under current law, the state of California cannot use federal water project facilities to provide water to users of the San Luis Unit of the Central Valley Project. H.R. 3077 would allow the state to use the San Luis Unit facilities to carry nonproject water to federal irrigation districts. Based on information from the Westlands Water District, we estimate the state would use federal water facilities to supply about 60,000 acre feet a year of nonproject water. CBO estimates that this activity would increase the Bureau of Reclamation's cost of operating and maintaining the project by $400,000 annually. This amount would be subject to annual appropriation and would be reimbursed by water users in the year the costs are incurred.

In addition, this activity would generate increased receipts to the Bureau under the Warren Act, which allows the Secretary of the Interior to charge nonproject water users fees that are consistent with those charged to users of federal water. These receipts and reimbursements for operation and maintenance costs would be deposited in the Treasury as offsetting receipts. Based on information from the Bureau and Westlands Water Districts, CBO estimates that these receipts would average $1.6 million a year, starting in 2001.

The CBO staff contact is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

This bill is not intended to preempt any State, local, or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 3, 1960

AN ACT To authorize the Secretary of the Interior to construct the San Luis unit of the Central Valley project, California, to enter into an agreement with the State of California with respect to the construction and operation of such unit, and for other purposes.

* * * * * * *

SEC. 2. The Secretary is authorized, on behalf of the United States, to negotiate and enter into an agreement with the State of California providing for coordinated operation of the San Luis unit, including the joint-use facilities, in order that the State may, without cost to the United States, deliver water in service areas outside the Federal San Luis unit service area as described in the report of the Department of the Interior, entitled "San Luis Unit, Central Valley Project", dated December 17, 1956. Said agreement shall recite that the liability of the United States thereunder is contingent upon the availability of appropriations to carry out its obligations under the same. No funds shall be appropriated to commence construction of the San Luis unit under any such agreement, except for the preparation of designs and specifications and other preliminary work, prior to ninety calendar days (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) after it has been submitted to the Congress, and then only if neither the House nor the Senate Interior and Insular Affairs Committee has disapproved it by committee resolution within said ninety days. If such an agreement has not been executed by January 1, 1962, and if, after consultation with the Governor of the State, the Secretary determines that the prospects of reaching accord on the terms thereof are not reasonably firm, he may proceed to construct and operate the San Luis unit in accordance with section 1 of this Act: *Provided,* That, if the Secretary so determines, he shall report thereon to the Congress and shall not commence construction for ninety calendar days from the date of his report (which ninety days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three days). In considering the prospects of reaching accord on the terms of the agreement the Secretary shall give substantial weight to any relevant affirmative action theretofore taken by the State, including the enactment of State legislation authorizing the State to acquire and convey to the United States title to lands to be used for the San Luis unit or assistance given by it in financing Federal design and construction of the unit. The authority conferred upon the Secretary by the first sentence of this section shall not, except as is otherwise provided in this section, be construed as a limitation upon the exercise by him of the authority conferred in section 1 of this Act, but if the State shall agree that, if it later enlarges the joint-use facilities, or any of them, it will pay an equitable share of the cost to the United States of those facilities as initially constructed before utilizing

them for the storage or delivery of water and will bear the entire cost of enlarging the same and if, as a part of said equitable share, it makes available to the Secretary sufficient funds to pay the additional cost of designing and constructing the joint-use facilities so as to permit enlargement, it shall have an irrevocable right to enlarge or modify such facilities at any time in the future, and a perpetual right to the use of such additional capacity *(subject to section 9)*: *Provided,* That the performance of such work by the State, after approval of its plans by the Secretary, shall be so carried on as not to interfere unduly with the operation of the project for the purposes set forth in section 1 of this Act **[**and the use of the additional capacity for water service shall be limited to service outside of the Federal San Luis unit service area**]**: *And provided further,* That this right may be relinquished by the State at any time at its option.

SEC. 3. The agreement between the United States and the State referred to in section 2 of this Act shall provide, among other things, that—

(a) * * *

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(h) Notwithstanding transfer of the care, operation, and maintenance of any works to the State, as hereinbefore provided, any organization which has theretofore entered into a contract with the United States under the Reclamation Project Act of 1939, and amendments thereto, for a water supply through the works of the San Luis unit, including joint-use facilities, shall continue to be subject to the same limitations and obligations and to have and to enjoy the same rights which it would have had under its contract with the United States and the provisions of paragraph (4) of section 1 of the Act of July 2, 1956 (70 Stat. 483, 43 U.S.C. 485h–1) in the absence of such transfer, and its enjoyment of such rights shall be without added cost or other detriment arising from such transfer; *and*

(i) if a nonreimbursable allocation to the preservation and propagation of fish and wildlife has been made as provided in section 2 of the Act of August 14, 1946 (60 Stat. 1080, 16 U.S.C. 662), as amended, the features of the unit to which such allocation is attributable shall, notwithstanding transfer of the care, operation, and maintenance to the State, be operated and maintained in such wise as to retain the basis upon which such allocation is premised and, upon failure so to operate and maintain those features, the amount allocated thereto shall become a reimbursable cost to be paid by the State**[**;**]**.

[(j) the State shall not serve any lands within the Federal San Luis unit service area except as such service is required as a consequence of its acceptance of the care, operation, and maintenance of works under paragraph (g) of this section.**]**

* * * * * * *

SEC. 9. The State of California may not, under section 2, use additional capacity to deliver water inside the Federal San Luis unit service area unless—

(1) such delivery is managed so as to ensure that—

(A) agricultural drainage discharges arising from use of the delivered water—

(i) comply with any waste discharge requirements issued for such discharges; or

(ii) if there are no such waste discharge requirements, do not cause water quality conditions in the San Joaquin River and the Sacramento-San Joaquin Delta and San Francisco Bay to be degraded or otherwise adversely affected; and

(B) use of the delivered water for irrigation does not frustrate or interfere with efforts by the United States and the State of California to manage agricultural subsurface drainage discharges from the San Luis unit; and

(2) such delivery is consistent with those provisions of operating agreements between the Secretary and the Department of Water Resources of the State of California that are consistent with this Act.

ADDITIONAL VIEWS

H.R. 3077 would for the first time allow water users within the San Luis Unit of the Central Valley Project to become full entitlement contractors of California's State Water Project. Specifically, Westlands Water District is proposing to purchase a 20,500 acre-feet State Water Project entitlement from several water districts in Kern County.

This is significant legislation affecting water management in California. H.R. 3077 obviously provides water users in the Federal San Luis Unit service area with significant opportunities to access supplemental water supplies. However, only a very limited time was allowed for Committee consideration and to receive testimony and comment from affected parties. The bill was introduced, heard, and reported from Committee in less than two weeks. The only witness at the Subcommittee's October 21, 1999 hearing was the Westlands Water District. The Committee record does not include testimony from the State of California, the State Water Contractors, the Department of the Interior, environmental groups, or fish conservation and protection organizations.

It may be that these groups and organizations will be only slightly affected by enactment of H.R. 3077, or perhaps not affected at all, or even affected in a positive way. But because of the limited time provided for consideration of this legislation, the Committee records do not include statements from any of them.

A key issue raised by any proposal to provide additional supplies of irrigation water to the San Luis Unit is subsurface drainage. Discharges of subsurface agricultural drainage from the San Luis Unit caused the deaths of hundreds of waterfowl at the Kesterson Reservoir site in the mid 1980s, and drainage management in the San Luis Unit continues to be a critical and unresolved issue. The committee accepted my amendment that would allow the State to deliver water to the San Luis Unit only after specific requirements have been met to protect water quality.

The purpose of the Miller Amendment is to ensure that irrigation water deliveries from the State Water Project to the Federal San Luis Unit service area are carefully managed and are not directed to lands that are known to contribute to agricultural drainage problems with resultant adverse effects on water quality in the San Joaquin River, the Sacramento-San Joaquin Delta, or San Francisco Bay.

The amendment:

Specifically prohibits delivery of State water to lands within the Federal San Luis service area unless we are assured that adverse water quality impacts will not result from the use of this new supply of irrigation water.

Further protects water quality by prohibiting the use of water deliveries from the State Water Project if using this new

water supply would aggravate or frustrate our efforts to manager drainage discharges to the San Joaquin River and the Bay-Delta system.

Requires that delivery of water from the State of California must be consistent with project operating agreements between the State of California and the United States.

GEORGE MILLER.

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